DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT AGENCY
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DRAFT

(enter issuing office symbol) (Date)

MEMORANDUM FOR SEE DISTRIBUTION

Subject: IMA Policy for Removal of Facilities that Contain Lead-based Paint

Policy:
No federal or state laws or regulations require abatement of lead-based paint (LBP) or other lead hazards prior to removal of a facility via demolition. Because there are no governing regulations IMA must establish a Policy to be used when removing facilities known or presumed to contain lead-based paint (LBP). This policy does not apply to renovation or remodeling of facilities for re-use or re-occupation.

References:

EM 385-1-1
Applicable State documents (TBD)

Guidelines:

The planning, design and execution of projects subject to this Policy will follow these guidelines to ensure that potential lead exposures are assessed, and that each project will be designed and executed so as to protect the health and safety of personnel and the general installation environment.

1. Determine whether LBP is known or presumed to be present. If so, this Policy shall apply.

2. Ensure compliance with EM 385-1-1, including Section 06.B.05(a)-(b) (Lead Compliance Plan).

3. Abatement of lead-based paint prior to demolition is prohibited. Exceptions may be requested by contacting CEHNC-IS-FS-FRP Program Manager.

4. These guidelines are equally applicable to facility removal projects that are selected for material recycling, deconstruction, or disassembly.

5. Before demolition, determine whether LBP and/or other lead contamination will cause demolition wastes to be classified as “hazardous waste,” using Environmental Protection Agency’s (EPA’s) Toxicity Characteristic Leaching Procedure (TCLP).

6. Every demolition contract document shall include one of the following statements.

    a. A statement that no lead-based paint is present.

b. A statement that management of non-hazardous wastes that contain LBP is required to protect against lead exposures.
c. A statement that management of hazardous wastes that contain LBP is required in order to comply with applicable state and local management and disposal requirements. (Requirements for each state are included in Attachment TBD.)

7. Unless otherwise restricted, materials coated with lead-based paint may be placed in the installation landfill.

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UNITED STATES ARMY
FACILITY REDUCTION PROGRAM (FRP)

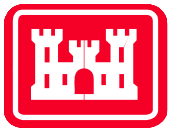
Supporting Documentation for an Army Installation Management Agency Policy for the Removal of Facilities that Contain Lead-based Paint

June 20, 2004

Prepared for:

UNITED STATES ARMY
INSTALLATION MANAGEMENT AGENCY (IMA)

Prepared by:



UNITED STATES ARMY CORPS OF ENGINEERS
ENGINEERING AND SUPPORT CENTER
HUNTSVILLE, ALABAMA (CEHNC)

IMA Policy Statement – Supporting Documentation

I. INTRODUCTION AND SUMMARY

Management of lead contamination during facility removal (demolition/deconstruction) has become a significant issue in many facility removal projects. Field personnel's understandings of regulatory requirements associated with lead management vary – these inconsistencies and confusion are perpetuated by variations in inputs from potential contractors, and variations in guidance from local regulators. In a number of cases, projects have unnecessarily incorporated "abatement" of LBP prior to demolition.

No federal requirement calls for LBP abatement as part of facility removal projects. Abatement can be required as part of *renovation* of residential and child-occupied units that will continue those uses after renovation is completed. Accordingly, unless necessary to protect worker or public health or safety, abatement imposes unnecessary costs and delays on removal projects, and should not be incorporated into removal projects.

This document evaluates the federal regulatory requirements applicable to removal of facilities that contain lead-based paint – most states copy federal requirements. However, some states provide more detailed guidance that clarifies uncertainties in federal requirements, and a few states impose additional requirements. This document presents examples of state standards – but does not contain an exhaustive survey of all states, so readers involved with facilities removal projects are cautioned to determine with certainty what local regulations/guidance applies.

II. DEFINING LEAD-BASED PAINT AND LEAD HAZARDS

Different laws and regulations apply somewhat different definitions and standards to the regulation of LBP, lead-contaminated materials and wastes, and the hazards associated with removal of facilities that contain lead. This Section discusses the definitions and standards most important to removal of facilities that contain lead-based paint.

The most important regulatory standards for removal projects do *not* set direct limits based on the concentrations of lead in specific materials and wastes:

- Corps requirements to address lead address exposures to workers, not the concentrations of lead in the materials that cause the exposure (see Section III)
- Worker safety standards address lead exposures to workers, not the concentrations of lead in the materials that cause the exposure (see Section IV)
- Hazardous waste rules require testing lead-contaminated wastes for potential leachability, not the concentrations in the wastes (see Section V.A.2)

The most commonly discussed standard is not directly relevant to facility removal projects. A federal law commonly referred to as "**Title X"** applies work practice requirements to renovation projects conducted for the purpose of abatement as "any measure or set of measures designed to permanently eliminate lead-based paint hazards."[1] EPA regulations issued to implement Title X define lead-based paint as follows:[2]

> "Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight."

This concentration limit coincides with the maximum concentration allowable until February 27, 1978 in paint sold for use by "consumers" (meaning the general public) or in locations to which consumers have direct access – including residences, schools, hospitals, parks, playgrounds, and public buildings. Effective February 28, 1978, the Consumer Product Safety Commission (CPSC) bans the manufacture or sale of such paint containing more than 0.06% lead by weight – what the CPSC regulations term "lead containing paint."[3] Note, however, that the CPSC's ban does not apply to "industrial (and commercial) building and equipment maintenance coatings," so facilities constructed after 1978 may well include paint with higher concentrations.[4]

When regulators, project managers and consultants refer to LBP they typically are referring to this standard. Similarly, the 1978 effective date of the CPSC ban is the basis for the presumption that pre-1978 residential structures include LBP and that later constructions do not.

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[1] "Title X" refers to Title X of the Housing and Community Development Act of 1992. Pub.L. No. 102-550; 42 U.S.C. § 4851 *et seq*. The "X" represents the Roman numeral ten, so the legislation and its resulting program are pronounced "Title Ten."
[2] 40 C.F.R. § 745.103.
[3] 16 C.F.R. part 1303.
[4] 16 C.F.R. § 1303.3(b)(2).

III. CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS

The Corps' Safety and Health Requirements Manual (EM 385-1-1) ("the Manual") provides detailed requirements for activities and operations. In addition to general provisions, two detailed planning and implementation requirements apply to projects involving the removal of facilities that contain Lead-based Paint (LBP).

A. Lead Compliance Plan

As set forth in Section 6.B.5 of the Manual, "work that will impact lead-containing materials"[5] requires a **written lead compliance plan must be prepared before beginning work**:

1. Contents of lead compliance plan – plan shall address the following**:**

- description of each work activity in which lead is emitted
- description of measures (including any engineering controls) to be used to comply with exposure limits
- worker exposure assessment, initial and ongoing
- protective clothing to be worn, and hygiene facilities and practices to be employed
- administrative controls to limit worker exposure, if engineering controls and personal protective equipment (PPE) fail to eliminate exposures that exceed the permissible exposure limits (PEL)
- medical surveillance procedures, and fitness testing for employees who use respirators
- worker training and services of a "competent person" to assure workers' understanding of lead hazards and protections
- detailed sketches identifying lead hazard control areas
- air monitoring – perimeter or other areas as needed
- security
- waste generation, characterization, transportation, and disposal (including record keeping)

2. Additional requirements – for contents and transmittals:

- plan shall comply with worker protection standards promulgated by the Occupational Safety and Health Administration (OSHA).[6] Those requirements are summarized in Section IV of this Document.
- plan shall be developed as an appendix to the Project Safety Plan
- plan shall be submitted for acceptance by the Government Designated Authority (GDA)

[5] EM 385-1-1 (rev. 11/3/03) § 6.B.05.
[6] The Manual specifically requires that the lead compliance plan be consistent with OSHA's Lead Standard for General Industry (29 C.F.R. § 1910.1025) and Lead in Construction Standard (29 C.F.R. § 1926.62).

- Unified Field Guide Specifications (UFGS) for lead and general health and safety[7] "should be used" *[REVIEWERS – SHOULD OTHERS ALSO BE CITED?]*

B. Demolition plan

Section 23 of the Manual sets forth requirements for demolition projects. This Section provides a detailed outline of the following activities, which will apply to demolition of facilities with LBP:

1. Survey and planning – prior to initiating demolition activities:

- engineering survey by a registered professional engineer (PE) to determine layout, condition, and hazards (including lead hazards)
- demolition plan by a PE, based on the engineering survey and the lead survey

2. Project activities – the demolition project shall be designed and executed in conformity with requirements established by Section 23, including sequencing and structuring of activities to accomplish project goals safely.

[7] *See* UFGS-13282N (lead in construction) and UFGS-01525 (safety and occupational health requirements).

IV. WORKER PROTECTION REQUIREMENTS (OSHA AND SOME STATES)

OSHA, or a delegated worker protection agency in some states, enforces requirements to protect workers involved in construction work involving lead.[8] As noted above in Section III, the Corps' Safety and Health Requirements Manual incorporates these requirements into requirements that a **lead compliance plan** be developed and implemented in any "work that will impact lead-containing materials."[9]

A. Lead in Construction Standard

OSHA's Lead in Construction Standard defines the scope to include:[10]

> "… all construction work where an employee may be occupationally exposed to lead…. Construction work is defined as work for construction, alteration and/or repair, including painting and decorating. It includes but is not limited to the following:
> "(1) Demolition or salvage of structures where lead or materials containing lead are present;"
> (2) Removal or encapsulation of materials containing lead;
> (3) New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead…"

Unlike many other regulatory requirements applicable to lead, there is no specific threshold concentration of lead in the materials necessary to trigger applicability of this Standard. Instead, each **employer's primary responsibility is to determine worker's exposure to workplace lead, and to take steps to ensure that exposures are below applicable standards.** These exposure limits consist of the following:[11]

- permissible exposure limit (PEL) of 50 micrograms of lead per cubic meter (50 $\mu g/m^3$) averaged over an 8-hour shift, which must not be exceeded; and an
- "action level" of 30 $\mu g/m^3$, which triggers provisions such as exposure monitoring, medical surveillance, and training.

B. General Industry Lead Standard

[8] 29 C.F.R. § 1926.62 (Construction Standard – Lead), quoting subsection (a). *See also* 29 C.F.R. § 1910.1025 (General Industry Standard – Lead). OSHA implements its own regulations in 25 states; the other states (so-called "state plan states") have been delegated authority to administer OSHA regulations, and often include additional and/or more stringent provisions. For example, OSHA administers its regulations in Arizona, Colorado, Georgia, New York (private sector employers only), and Texas; Virginia is a state plan state, but VOSH's Lead standards are the same as OSHA's. California, another state plan state, requires a "pre-job notification" to Cal/OSHA whenever a project will disturb 100 square feet or more, or 100 linear feet or more, of lead-containing material (the Standard excludes consideration of materials that are less than 0.5%, 5,000 ppm or 1.0 $\mu g/cm^2$). Cal. Labor Code §§ 6716 - 6717; 8 C.C.R. § 1532.1(p). OSHA's Internet site identifies state plan states and related contacts – *see* www.osha.gov/fso/osp/index.html.
[9] EM 385-1-1 (rev. 11/3/03) § 6.B.05.
[10] 29 C.F.R. § 1926.62(a)(1)-(3).
[11] 29 C.F.R. §§ 1926.62(b) (action level), 1926(c)(1) (PEL).

OSHA's Lead Standard establishes requirements and specifications covering the following:[12]

- exposure assessment – of "representative" exposures, to determine whether any employee will be exposed to lead at or above the action level (i.e., ambient exposure of 30 $\mu g/m^3$, without considering respiratory protection);
- ongoing monitoring – if exposures exceed the action level (including provisions for employee observation of monitoring);
- engineering and work practice controls, including administrative controls, to reduce and maintain exposures below the PEL;
- compliance program – prepare a written plan and implement the activities;
- respiratory protection program, including respirators – when exposures exceed the PEL, or upon employee request;
- protective work clothing and equipment;
- housekeeping – to minimize accumulation of lead
- hygiene facilities and practices – washing and showering facilities;
- medical surveillance and medical removal protection programs (if exposures exceed action level for 30 days/year or more);
- information and training programs – for employees and their supervisors engaged in lead-related construction work;
- signs; and
- record keeping;

[12] 29 C.F.R. § 1926.62.

V. HAZARDOUS WASTE REQUIREMENTS (RCRA AND STATE LAWS)

Not all wastes that contain lead are "hazardous wastes." The federal hazardous waste law (RCRA; Resource Conservation and Recovery Act)[13] identifies lead as a contaminant that *may* render a waste "hazardous;" EPA's regulations refer to a "waste that exhibits the characteristic of toxicity."[14]

Material (including debris) generated by deconstruction or demolition activities that is "hazardous waste" must be managed in compliance with applicable RCRA or state standards. **If the material is not hazardous waste, its management is not presently subject to federal regulation and it can be reused or disposed of as appropriate.**

A. General provisions for determination of hazardous waste

RCRA was first adopted as an amendment and expansion to the Solid Waste Disposal Act of 1965 (SWDA), so the scope of "hazardous" waste regulations is defined within the broader range of "solid" waste regulation provided under SWDA. Consequently, the definitions of waste, solid waste, and hazardous waste build upon one another, in somewhat convoluted manner. (See V Appendix B for flow charts of the definition of hazardous waste found at 40 C.F.R. part 260 app. I.)

1. Is the material a "solid waste"?

The first step in deciding whether a material will be subject to RCRA is to determine whether it constitutes a solid waste. As set forth in the legislation, "[t]he term **'solid waste'** means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities…."[15]

SWDA and EPA's regulations provide some clarifications and exclusions, under which some materials associated with the Corps' demolition and deconstruction projects generally are not considered "wastes."

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[13] 42 U.S.C. §§ 6901 - 6992k; 40 C.F.R. parts 260 - 279. States can apply for and receive authorization to administer RCRA within their jurisdictions, based on demonstrations to EPA that their programs will be at least as protective as federal requirements. States initially apply for "base authorization," and thereafter may apply to undertake additional requirements as those are promulgated by EPA. EPA summarizes states' authorization status and provides additional documentation on its Internet site at www.epa.gov/epaoswer/hazwaste/state/index.htm.

[14] 40 C.F.R. § 261.24. Lead appears in § 261.24(b)'s Table 1 as one of the "contaminants for the toxicity characteristic."

[15] 42 U.S.C. § 6903(27); 40 C.F.R. §§ 257.3, 258.3. This definition excludes a variety of wastes not generally involved in deconstruction and demolition projects, including sanitary, irrigation and industrial wastewater flows, and nuclear materials regulated under the Atomic Energy Act. *Id*.

2. If the material is a solid waste, is it "hazardous (characteristic toxic)" because of lead contamination?

Based on the definition of "solid waste" quoted above, RCRA defines **hazardous waste** as:

> " ... a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious **characteristics** may—
> (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
> (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." (emphasis added)

One of the "characteristics" EPA uses to define whether a waste is "hazardous" is "toxicity" – which the regulations phrase as the question whether a waste is "characteristic toxic" or "exhibits the characteristic of toxicity." **Materials containing lead, including lead-based paint, may be "characteristic toxic."** To determine whether a waste containing lead is or is not characteristic toxic, EPA requires testing of the lead-contaminated materials, using the **"Toxicity Characteristic Leaching Procedure (TCLP)."**[16]

Note that the TCLP calls for collection of a "representative sample" of the material to be tested – but EPA does *not* define "representative."[17] EPA recognizes it is difficult to define a "representative" sample of LBP-containing debris from a project, which is likely to contain a variety of components of varying sizes in varying states of weathering.[18]

However, some guidance is available. For example, the Colorado Department of Public Health & Environment (CDPHE) provides this guidance:[19]

> "If the waste consists of lead-based paint as an integral part of demolition debris, the appropriate way to collect samples is by coring a representative portion of the material to be disposed (i.e., core through the wall, including both paint and wood). Because of the relatively small amount of lead present in the paint film on a wall, these wastes may not fail TCLP, and many can be disposed of as a solid waste."

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[16] 40 C.F.R. § 261.24(a). The TCLP appears as Method 1311 in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846). EPA provides the text of SW-846 on its Internet site, including Method 1311. *See* www.epa.gov/epaoswer/hazwaste/test/sw846.htm.

EPA has adopted a special provision that allows "residential LBP waste" generated by activities such as rehabilitation, renovation and remodeling of homes – including barracks – to be disposed in construction and demolition (C&D) landfills instead of hazardous waste landfills. 40 C.F.R. §§ 257.2, 258.2. However, this provision does not apply to non-residential facilities, and does not apply to demolition. 68 Federal Register 36847 (June 18, 2003).

[17] *Id*.

[18] *See* EPA's discussion of this issue in the preamble to its still-pending 1998 proposal for management of LBP debris under Title X. 63 Federal Register 70196 – 70197 (December 18, 1998). This proposal is discussed in Section IV.B of this memorandum.

[19] CDPHE, "Compliance Bulletin – Hazardous Waste: Lead-Based Paint Abatement and Waste Management" (rev. August 2002). Available from the CDPHE Internet site, www.cdphe.state.co.us.

In other states, sampling technicians and analytical laboratories have developed their own methods, which have been acceptable over time to regulators from EPA and state agencies. These generally are similar to the Colorado guidance. *[REVIEWERS – DO YOU WANT SAMPLES – YOURS OR OURS?]*

As a condition for authorizing a state to administer RCRA requirements, EPA requires that state hazardous waste programs to be at least as stringent as RCRA and its regulations. Accordingly, all states also establish TCLP as the analytical method by which wastes are tested to determine whether lead contamination renders them "hazardous."[20]

3. Does the waste qualify for an exclusion from management requirements?

EPA's RCRA regulations provide possible exclusions from RCRA management requirements, one of which may apply to LBP-contaminated materials:[21]

> "(1) Materials are not solid wastes when they can be shown to be recycled or reused by being: … (ii) Used or reused as effective substitutes for commercial products;"

By its terms, this exclusion should be applicable to reuse of architectural components that are removed from LBP-containing facilities through deconstruction, and reused in other facilities. Unfortunately, however, EPA has never issued a formal policy statement that explicitly endorses application of this exclusion to deconstruction and reuse activities.[22] However, many regulators will approve this approach, and some formally endorse it.[23]

In addition, EPA *proposed* in 1998 to exclude deconstruction and demolition debris from RCRA and to regulate it instead under special TSCA provisions.[24] However, this proposal, which is discussed below in Section VI.B, remains pending as of this time.

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[20] There is a complication in California, which requires testing using the TCLP, *and also* a state-mandated "Waste Extraction Test (WET)" if the waste contains any state-listed "persistent and bioaccumulative toxic substances." 22 C.F.R. § 66261.24. Lead is among those listed substances, so in California lead-contaminated materials must be tested using both the TCLP and WET.

[21] 40 C.F.R. § 261.2(e)(ii).

[22] For example, EPA has noted that a representative sample of demolition debris, which would include LBP-containing debris and larger quantities of non-LBP containing debris, would probably pass the TCLP test and be non-hazardous. 63 Federal Register 70206 (December 18, 1998).

[23] *See, e.g.,* Georgia Department of Natural Resources (GDNR), "Georgia's Lead-Based Paint Waste Disposal Requirements" (10/31/01), which is posted on the GDNR Internet site, www.dnr.state.ga.us. This guidance expressly includes architectural components from demolition projects as well as renovation and abatement projects.

[24] Proposed 40 C.F.R. §§ 745.301 – 745.319; 63 Federal Register 70190 (December 18, 1998).

VI. TOXIC SUBSTANCES CONTROL ACT (TSCA) AND TITLE X

As was noted above in Section II, demolition projects involving LBP are *not* presently subject to Title X requirements to "abate" LBP. However, a pending proposal by EPA would establish requirements, which would replace RCRA considerations with a streamlined compliance system. This Section summarizes existing standards for renovation projects briefly, and describes the pending proposal.

A. Abatement during Renovation of Target Housing (not demolition)

Title X assigns responsibilities to the Department of Housing and Urban Development (HUD) to regulate testing, abatement, worker protection, cleanup, and disposal of lead-based paint. HUD has published extensive regulations, plus a risk reduction strategy encouraging screening, providing resident education, and setting priorities for abatement in public and Indian housing.[25] Title X also adopted Title IV of the Toxic Substances Control Act (TSCA), which assigns EPA additional responsibilities for lead poisoning prevention.[26] HUD and EPA coordinate their Title X program activities, including a number of joint rulemakings.

Title X includes a variety or requirements governing abatement of LBP during renovation of "target housing," which includes most residential units built before 1978 (i.e., before contemporary restrictions on lead content in paint used in residential units).[27] Although Title X refers to "renovation" it does not define the term. However, EPA and HUD have done so as part of their regulations. For example, EPA's regulations governing residential property renovations define the term as follows:[28]

> "Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement."

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[25] 24 C.F.R. part 35. *See also,* HUD, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," June 1995. These guidelines are also used as a guide and reference for provisions of TSCA Title IV. The Internet site for HUD's Office of Healthy Homes and Lead Hazard Control addresses these requirements and related lead issues, at http://www.hud.gov/offices/lead/index.cfm.

[26] TSCA Title IV is entitled "Lead Exposure Reduction." 15 U.S.C. secs. 2681 - 2692; 40 C.F.R. part 745. EPA has created a "Lead Home Page" addressing these requirements and related lead issues, at www.epa.gov/opptintr/lead/index.html.

[27] Title X provides the following definition: "The term 'target housing' means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based pain prior to 1978, the Secretary [i.e., of HUD], at the Secretary's discretion, may designate an earlier date." 42 U.S.C. § 4851b(27). EPA and HUD regulations are consistent with this definition.

[28] 40 C.F.R. § 745.83.

This definition assumes that the residential unit being renovated will continue in use – which obviously is not the case in a removal/demolition project.

Title X provides the following definition of "abatement:"[29]

> "The term 'abatement' means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate Federal agencies. Such term includes—
>
> (A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and
> (B) all preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures."

HUD guidelines[30] and EPA regulations[31] provide standards for work practices and related protective measures to be undertaken when abatement is conducted as part of renovation.[32]

Because these regulations do not apply to removal or demolition of facilities (including residential and non-residential facilities), Title X does not empower federal and state agencies to require abatement in these projects. Note that Texas' lead abatement regulation includes a unique provision that formally excludes demolition of target housing and child-occupied units from the definition of "lead abatement."[33]

B. EPA proposal to regulate LBP-contaminated demolition waste under TSCA

In December 1998 EPA issued a proposal to regulate LBP-contaminated waste, including debris from demolitions, under TSCA rather than RCRA.[34] As of this writing EPA still has not yet finalized the proposal, but continues to feature it prominently on the agency's Internet site. **Although this proposal has no legal force until it is eventually adopted, it does provide insight into EPA's consideration of LBP waste issues.**

In the preamble to this proposal, EPA notes that:[35]

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[29] 42 U.S.C. § 4851b(1). EPA's (40 C.F.R. § 745.223) and HUD's (24 C.F.R. § 35.110) regulations provide very similar definitions.
[30] HUD, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," June 1995. These Guidelines on the Internet at http://www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm.
[31] 40 C.F.R. part 745. *See, e.g.*, § 745.227 (Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities), which references the HUD Guidelines.
[32] Note that TSCA Title IV expressly waives the federal government's sovereign immunity relating to LBP activities and hazards, so federal facilities are subject to regulation and enforcement by federal and state agencies. 15 U.S.C. § 2688.
[33] 25 Texas Administrative Code (TAC) § 295.202(52)(B)(iii).
[34] Proposed 40 C.F.R. §§ 745.301 – 745.319; 63 Federal Register 70190 (December 18, 1998). EPA provides this proposal and related informational materials on its Internet site at www.epa.gov/opptintr/lead/leaddebr.htm.
[35] 63 Fed. Reg. 70191 (December 18, 1998).

> "The Agency has concluded for this proposal that disposal of LBP debris resulting from abatements, deleading, renovations, remodeling and **demolitions of target housing, child-occupied facilities, and public and commercial buildings** in certain non-hazardous waste solid waste disposal facilities … is safe, reliable, effective, and protective of human health and the environment." (emphasis added)

As quoted above, this proposal would remove management of LBP-containing waste from RCRA regulation, including ACE projects involving removal of facilities containing LBP (deconstruction/demolition).

The proposal sets forth management and disposal standards for the following materials and wastes:

- Lead-based paint architectural component debris (LBPACD) – which includes a wide variety of fixtures that can be removed from facilities by deconstruction.[36] These materials could be offered or sold for reuse, if the LBP is not deteriorated and/or if deteriorated LBP is first removed.[37] Transferors must also provide notice of the presence of LBP.[38]
- LBP demolition debris – which means "any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by lead-based paint at the time of demolition."[39]
- LBP debris – which means LBP demolition debris or LBPACD.[40]

All these materials could be disposed in construction and demolition (C&D) landfills, unless some other contaminant besides lead caused them to fail EPA's TCLP test (in which case applicable RCRA disposal standards would be followed).[41] If LBP is removed from the debris then the debris is no longer subject to these proposed requirements, and the paint chips

[36] "Lead-based paint architectural component debris (LBPACD) means: (1) Elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by lead-based paint. These include, but are not limited to interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim, including sashes, window heads, jambs, sills, stools and troughs, built-in cabinets, columns, beams, bathroom vanities, and counter tops; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, facias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells." Proposed 40 C.F.R. § 745.303.

[37] Proposed 40 C.F.R. § 745.311(a).

[38] Proposed 40 C.F.R. § 745.313. The proposal includes a "sample notification" form. *See* 63 Fed. Reg. 70215 (December 18, 1998).

[39] Proposed 40 C.F.R. § 745.303.

[40] Proposed 40 C.F.R. § 745.303. These proposed rules define "demolition" as "wrecking, razing, or destroying of any building or significant element thereof using a method that generates undifferentiated rubble." *Id*.

[41] The proposal includes standards for onsite storage and access, and for offsite transportation and disposal. Proposed 40 C.F.R. §§ 745.307 – 745.311. Wastes from households and conditionally-exempt small quantity generators are already exempt from RCRA disposal standards – but federal facilities generally would not qualify.

or other contaminated materials would be subject to RCRA testing and management requirements.[42]

If/when this proposal is finalized, *all* LBP debris resulting from removal of LBP-containing facilities would be exempt from regulation under RCRA (unless contaminated by some additional contaminant) and subject to these standards.

[42] Proposed 40 C.F.R. § 745.301(d).